



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:	)	
	)	
_____	)	
SSN: _____	)	ISCR Case No. 07-10448
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Melvin Howry, Esquire, Department Counsel  
For Applicant: *Pro Se*

February 20, 2009

**Decision**

WESLEY, Roger C., Administrative Judge:

**Statement of Case**

On October 3, 2008, the Defense Office of Hearings and Appeals (DOHA), pursuant to Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, and Department of Defense (DoD) Regulation 5200.2-R, issued a Statement of Reasons (SOR) to Applicant, which detailed reasons why DOHA could not make the preliminary affirmative determination of eligibility for granting a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR on October 28, 2008, and requested a hearing. The case was assigned to me on November 25, 2008, and was scheduled for hearing on December 15, 2008. The hearing was convened on the scheduled date for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, or deny, Applicant's application for a security clearance. At hearing, the Government's case consisted of 10 exhibits; Applicant relied on one witness

(himself) and two exhibits. The transcript (R.T.) was received on December 22, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **Procedural Rulings and Evidentiary Issues**

Before the close of the hearing, Appellant requested leave to supplement the record with documented agreements with the IRS and his State covering his missing tax filings and tax liens. For good cause shown, Applicant was granted 30 days to January 15, 2008 to supplement the record. The Government was afforded two days to respond. Applicant supplemented the record with a faxed federal tax information authorization, a state franchise tax board written installment agreement request, an IRS power of attorney and declaration of representative, a payment plan covering the listed creditors in the SOR, and a planned budget. Although the receipted documents were received several days past the due date, Department Counsel interposed no objections. For good cause shown Applicant's submissions were admitted as exhibits C through G. Applicant did not include any actual agreements with the IRS and State.

### **Summary of Pleadings**

Under Guideline F, Applicant is alleged to have (a) failed to file federal tax returns for tax years 2001 through 2006, (b) failed to file state tax returns for tax years 1992 through 2006, (c) accumulated an IRS tax lien in August 2001 for \$8,874.00, (d) accumulated State tax liens in May 2006 for \$4,303.00 and in September 2006 for \$4,845.00, (e) incurred a judgment in May 2000 for \$892.00 that has not been satisfied, and (f), accumulated five delinquent debts exceeding \$3,900.00 that have not been paid.

For his response to the SOR, Applicant admitted each of the listed allegations. He provided no explanations and claimed no affirmative defenses.

### **Findings of Fact**

Applicant is a 53-year-old electrical tech maintenance employee for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted to by Applicant are incorporated herein and adopted as relevant and material findings. Additional findings follow.

Applicant married his first wife (W1) in 1995 and divorced her in 2004, and living apart for almost 10 years (see ex. 1; R.T., at 54-55). He has four children by W1 (see ex. 1). One is a boy (age 21); the others are girls (ages 19 and 14). Only the 14-year-old currently resides with W1 (R.T., at 69). Applicant has no current child support responsibilities for any of his children, only back-child support (R.T., at 69).

Applicant failed to file federal income tax returns for tax years 2001 through 2006. He also failed to file State income tax returns for tax years 1992 through 2006

(see ex. 3). The IRS filed a federal tax lien against Applicant in August 2001 for \$8,844.00. His State's Franchise Tax Board filed tax liens against Applicant in May 2006 for \$4,303.00, and again in September 2006 for \$4,845.00 (ex. 3). None of these liens have been discharged to date.

Besides his federal and state tax liens, Applicant incurred a judgment in May 2000 in the amount of \$892.00 and accumulated five delinquent debts exceeding \$3,900.00 (see exs. 2, 4, 5, and 6). To date, Applicant has not provided any receipts of payment or otherwise documented existing disputes with any of the listed creditors in the SOR (see exs. 3, 7 and 8; R.T., at 54-59).

Applicant attributes his tax filing failures and ensuing liens to disputes with W1 over entitled tax exemptions for his children before and after their divorce in 2004. He provides no demonstrable proof of any of his claimed disputes or efforts to work with the IRS on resolving his claimed exemption dispute.

Applicant also disputes several of his other listed debts (e.g., creditor 1.g and creditor 1.j). He assures he returned his television unit to the vender, and is not responsible for the medical bill, which was incurred by W1 before their divorce (R.T., at 55-56). He provides no receipts or other documentation to corroborate his claims, however, and these debts remain unpaid. He acknowledges the judgment and remaining debts as his own, and explains they arose during a six-month period in 2006 when he was out of work and fell behind with some of his creditors (R.T., at 63-64). While unemployed during this six-month period, he also got behind with his child support payments with W1 (R.T., at 64).

Applicant married his current wife (W2) in 1995. She has one child of her own (age 28). Since his marriage to W2, he brought his back-child support payments current to W1 through retirement reductions (R.T., at 43), and is making every efforts to pay his creditors. Still, he has experienced recent financial set backs after his father-in-law became ill, and has required additional out-of-pocket expenses to take care of his medical needs (R.T., at 64-66). Complicating their repayment efforts, too are W2's (a nurse by profession) heavy driving expenses to finance her daily commute to her current assignment (R.T., at 74-75).

Applicant retained a tax relief firm in December 2008 to file his back tax returns with the IRS and the State and resolve his tax liens (see ex. A; R.T., at 46-47). He has since completed an installment agreement request with the State and executed a power of attorney authorizing his tax relief firm to represent him in IRS negotiations (see exs. D and E). Nonetheless, by the hearing date, he had not filed any of his back federal and state tax returns covered in the SOR or paid any of the taxes covered in the listed federal and state tax liens (R.T., at 45-50).

Afforded a post-hearing opportunity to provide completed tax returns, installment agreements, or documented evidence of his resolving his outstanding tax liens and other listed debts, Applicant failed to furnish any proofs he has achieved any tangible

results in resolving his tax and other debts. It is not clear either whether Applicant has paid the tax firm its requested fee of \$3,900.00 to underwrite its tax preparations and negotiations in Applicant's behalf (R.T., at 50-51). Applicant committed to send along \$1,950.00 to the tax firm by January 2008 (R.T., at 51-52), but provided no documentation of his making this payment.

Applicant is well regarded by his supervisor and security manager. Both value his honesty, integrity and trustworthiness (see ex. B). They commend his strong ethics and devotion to his family and attest to his overall good character.

### **Policies**

The revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (effective September 2006) list Guidelines to be considered by judges in the decision making process covering DOHA cases. These Guidelines require the judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

### **Financial Considerations**

*The Concern:* "Failure or inability to live within one's means, satisfy debts and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts." Adjudication Guidelines (AG), ¶ 18.

### **Burden of Proof**

By virtue of the precepts framed by the revised Adjudicative Guidelines, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because

the Directive requires Administrative Judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted facts alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of persuasion shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

### **Analysis**

Applicant is a good electrical technician who has failed to file his personal and state tax returns for a number of years and incurred tax liens with both the IRS and his State's Franchise Tax Board that have not been resolved. Records show that he also incurred a judgment and several other debts that have been not been paid or otherwise safely resolved.

Security concerns are raised under the financial considerations guideline of the revised AGs where the individual applicant fails to file federal and state tax returns and/or is so financially overextended as to indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, which can raise questions about the individual's reliability, trustworthiness and ability to protect classified information, and place the person at risk of having to engage in illegal acts to generate funds. Applicant's documented years of not filing his federal and state tax returns, his accumulation of federal and state tax liens, his outstanding judgment and other indebtedness, and his past inability to pay these debts warrant the application of three of the disqualifying conditions (DC) of the Guidelines for financial considerations: DC ¶ 19(a) "inability or unwillingness to satisfy debts," DC ¶19(c) "a history of not meeting financial obligations," and DC ¶19(g), "failure to file annual Federal, state, and local income tax returns as required or the fraudulent filing of the same."

Applicant claims disputes over his exemption entitlements were partially responsible for his recurrent failures to file his tax returns, he provides no documentation of any disputes with W1, or any good-faith attempts to work with responsible federal and

state tax officials. While he has taken recent steps to engage a tax relief firm to assist him in preparing his back tax returns and work out payment arrangements, he has achieved no tangible results to date in filing his taxes or resolving his outstanding tax liens. Nor has he been able to make any visible headway in discharging the outstanding judgment against him or paying or resolving his other documented delinquent debts. In a nutshell, Applicant's efforts remain a work in progress with no tangible input by which to gauge his progress.

Mitigation credit to Applicant is very limited based on his furnished proofs. At this time, all of Applicant's outstanding tax returns and liens remain unresolved. The same holds true with the judgment debt and accumulated debt delinquencies identified in the SOR. As a result, MC ¶ 20(a), "the behavior happened so long ago, was so infrequent, or occurred under circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment," cannot be applied to Applicant's situation. MC ¶ 20 (d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," has no applicability either based on Applicant's failure to document any repayment efforts with his listed creditors and provide satisfactory proofs that the tax and other debts covered by subparagraphs 1.c through 1.k have been paid.

Because Applicant has chosen recently to seek counseling advice relative to his identified tax filing failures and tax liens, he may take limited advantage of MC ¶ 20(c) "the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control." While there is some reason to anticipate future resolution of his federal tax issues based on his documented installment agreement request with the State and his executed power of attorney with his tax relief firm, he has produced no tangible progress with the IRS or State Franchise Tax Board to date. Nor does he provide any tangible evidence of repayment efforts with the consumer judgment holder or other creditors covered in the SOR. Considered together, Applicant's efforts are not enough to warrant any more than partial application of MC ¶ 20(c). Lack of documentation also precludes him from taking any more than minimal advantage of MC ¶ 20(e), "the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue."

Holding a security clearance involves the exercise of important fiducial responsibilities, among which is the expectancy of consistent trust and candor. Financial stability in a person cleared to access classified information is required precisely to inspire trust and confidence in the holder of the clearance. While the principal concern of a clearance holder's demonstrated financial difficulties is vulnerability to coercion and influence, judgment and trust concerns are implicit in financial cases (as here).

Whole person assessment does not help Applicant to overcome the judgment lapses associated with his tax filing failure, tax liens and consumer judgment and debt concerns. His good work history and family devotion to his current wife and children are

commendable and deserving of praise. His failure, though, to diligently monitor and ensure timely tax filings and payments to the IRS and State in connection with his personal tax responsibilities, and otherwise attend to his consumer debts covered in the SOR reflects the lack of minimal judgment and trust required for holding a security clearance. These concerns are not mitigated under the whole person concept.

Taking into account all of the facts and circumstances surrounding Applicant's unresolved tax filing failures, tax liens, and debt accumulations, his earnest but still mostly unsuccessful steps to resolve them, and the absence of sufficient efforts to demonstrate his financial responsibility and trustworthiness in managing his finances, Applicant does not mitigate security concerns related to his tax filing failures, tax liens and other proven debt delinquencies. While Applicant is to be commended and encouraged in his repayment efforts, more tangible proofs of success are necessary to satisfy minimum standards of security eligibility. Unfavorable conclusions warrant with respect to the allegations covered by sub-paragraphs 1.a through 1.k.

In reaching my decision, I have considered the evidence as a whole, including each of the E 2(a) factors enumerated in the Adjudicative Guidelines of the Directive.

### **Formal Findings**

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

GUIDELINE F: (FINANCIAL CONSIDERATIONS):      AGAINST APPLICANT

Sub-paras. 1.a, through 1.k:                              AGAINST APPLICANT

### **Conclusions**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is denied.

---

Roger C. Wesley  
Administrative Judge

